**TENNESSEE GENERAL ASSEMBLY**
**FISCAL REVIEW COMMITTEE**

# CORRECTED FISCAL NOTE

## SB 1617 - HB 1398

March 15, 2021

**SUMMARY OF BILL:** Prohibits a health insurance issuer, a managed health insurance issuer, a pharmacy benefits manager (PBM) or third-party payer from reimbursing a 340B entity for pharmacy-dispensed drugs at a rate lower than that paid for the same drug to pharmacies that are not 340B entities, and from assessing any fee, or other adjustment upon the 340B entity that is not equally assessed on non-340B entities, or exclude a 340B pharmacy from the PBM's or third party's pharmacy network based on criteria that is not applied to non-340B entities.

Prohibits a PBM and third parties from discriminating against a 340B entity or a pharmacy that participates in a health plan as an entity authorized to participate under 42 U.S.C. § 256b in a manner that prevents or interferes with the patient's choice to receive those drugs from the 340B entity.

Requires a PBM to permit a person covered under a group medical benefit contract, or a pharmacy benefit contract, that provides coverage for prescription drugs to obtain prescription drugs, including specialty drugs, from a physician's office, hospital outpatient infusion center providing and administering the prescription drug, or pharmacy.

Prohibits a PBM from imposing coverage or benefits limitations, or requiring a person covered under a group medical benefit contract, or a pharmacy benefit contract, to pay an additional fee, higher copay, higher coinsurance, second copay, second coinsurance, or other penalty when obtaining prescription drugs, including specialty drugs, from a physician's office, hospital outpatient infusion center providing and administering the prescription drug, or pharmacy. Prohibits a PBM from interfering with a patient's right to choose a pharmacy or provider of choice, including inducement, steering, or offering financial or other incentives.

Requires a PBM or covered entity to base the calculation of any coinsurance for a prescription drug or device on the allowed amount of the drug or device. Prohibits a PBM from charging a covered entity an amount greater than the reimbursement paid by a PBM to a contracted pharmacy for the prescription drug or device.

Establishes that a PBM has a fiduciary responsibility to report to the plan and the patient any benefit percentage that either are entitled to as a benefit as a covered person.

Requires a covered entity to provide the cost, benefit and coverage data upon request of an enrollee, an enrollee's healthcare provider, or the authorized representative of an enrollee. Requires requested data be accurate, provided in real time and in the preferred format of the requesting party.

Requires a covered entity to provide data for each drug covered under the enrollee's health plan that includes: (1) the enrollee's eligibility information for the drug; (2) a list of any clinically appropriate alternatives to drugs covered under the enrollee's health plan; (3) cost-sharing information for the drugs and the clinically appropriate alternatives; and (4) applicable utilization management requirements for the drugs or clinically appropriate alternatives, including prior authorization, step therapy, quantity limits, and site-of-service restrictions.

Prohibits a covered entity from: (1) restricting, prohibiting, or otherwise hindering a healthcare provider from communicating or sharing data, additional information on covered alternatives, or from executing options that reduce payment for a patient; or (2) penalizing a healthcare provider for information disclosures or prescribing, administering or ordering covered alternative drugs.

## ESTIMATED FISCAL IMPACT:

On March 10, 2021, a fiscal note was issued for this legislation estimating a fiscal impact as follows:

*Increase State Expenditures –*
*Exceeds $1,480,000/FY21-22*
*Exceeds $859,300/FY22-23 and Subsequent Years*

*Increase Federal Expenditures –*
*Exceeds $5,851,600/FY21-22*
*Exceeds $2,014,500/FY22-23 and Subsequent Years*

*Increase Local Expenditures –*
*Exceeds $1,200/FY21-22**
*Exceeds $2,400/FY22-23 and Subsequent Years**

Based on new information provided by the Division of Benefits Administration, it was determined the estimated fiscal impact was in error. As a result, the estimated fiscal impact has been corrected as follows:

**(CORRECTED)**
**Increase State Expenditures – $1,476,700/FY21-22**
**$852,700/FY22-23 and Subsequent Years**

**Increase Federal Expenditures – $5,851,300/FY21-22**
**$2,014,000/FY22-23 and Subsequent Years**

Corrected Assumptions:

*Division of TennCare:*

- Based on information provided by the Division of TennCare (Division), to meet the requirements of the proposed legislations, the Division's three managed care

organizations (MCOs) and PBM will have to implement and maintain a data system to share the required pharmacy related data in real time. Existing infrastructure for both the MCOs and PBM will be used and expanded on.

- The average cost per MCO for implementation of the data system is estimated to be $1,046,000. The total cost for implementation for all three MCOs is estimated to be $3,138,000 ($1,046,000 x 3).
- Medicaid expenditures receive matching funds at a rate of 66.295 percent federal funds to 33.705 percent state funds. Of this amount, $1,057,663 ($3,138,000 x 33.705%) will be in state funds and $2,080,337 ($3,138,000 x 66.295%) will be in federal funds in FY21-22.
- Annual maintenance of the data system is estimated to be $521,000 per MCO, per year.
- The total recurring cost for system maintenance for MCOs is estimated to be $1,563,000 ($521,000 x 3) in FY22-23 and subsequent years. Of this amount, $526,809 ($1,563,000 x 33.705%) will be in state funds and $1,036,191 ($1,563,000 x 66.295%) will be in federal funds.
- The costs associated with implementing the data system for each of the three MCOs are significantly less than the PBM due to the MCOs system being limited to physician administered and hospital-based medications. The PBM data system will be required to aggregate and exchange data from all three MCOs in addition to medication data.
- The costs associated with implementing the data system for the PBM in FY21-22 is estimated to be $4,190,000. Medicaid administrative expenditures for investments in information technology receive matching funds at a rate of 90 percent federal funds to 10 percent state funds. Of this amount, $419,000 ($4,190,000 x 10.0%) will be in state funds and $3,771,000 ($4,190,000 x 90.0%) will be in federal funds.
- Annual maintenance of the PBM data system is estimated to be $1,303,750.
- Medicaid administrative expenditures in FY22-23 and subsequent years for ongoing information technology expenses receive matching funds at a rate of 75 percent federal funds to 25 percent state funds. Of this amount, $325,938 ($1,303,750 x 25.0%) will be in state funds and $977,813 ($1,303,750 x 75.0%) will be in federal funds.
- The total increase in state expenditures is estimated to be $1,476,663 ($1,057,663 + $419,000) in FY21-22.
- The total recurring increase in state expenditures is estimated to be $852,747 ($526,809 + $325,938) in FY22-23 and subsequent years.
- The total increase in federal expenditures is estimated to be $5,851,337 ($2,080,337 + $3,771,000) in FY21-22.
- The total recurring increase in federal expenditures is estimated to be $2,014,004 ($1,036,191 + $977,813) in FY22-23 and subsequent years.
- Based on information provided by the Division of Benefits Administration, the state group insurance program’s PBM does not currently pay a differential rate to 340b filling prescriptions.
- The proposed legislation will not impact any programs or policies of the DCI; therefore, any fiscal impact is estimated to be not significant.

## IMPACT TO COMMERCE:

**Increase Business Revenue – $7,328,000/FY21-22**
**$2,866,800/FY22-23 and Subsequent Years**

**Increase Business Expenditures – $7,328,000/FY21-22**
**$2,866,800/FY22-23 and Subsequent Years**

**Jobs Impact – Additional 10 positions**

**Other Commerce Impact – Due to multiple unknown factors, additional impacts to commerce and jobs cannot be reasonably determined.**

Assumptions:

- The Division of TennCare's managed care organizations (MCO) and pharmacy benefits manager (PBM) will experience an increase in business expenditures to implement and maintain the new data system, estimated to be $7,328,000 ($1,476,663 + $5,851,337) in FY21-22 and $2,866,751 ($852,747 + $2,014,004) in FY22-23 and subsequent years. Such expenditures will be covered by state and federal funds, resulting in an equivalent increase in business revenue.
- The Division's PBM will have to hire 10 full-time employees to implement and maintain the data system; therefore, the jobs impact is estimated to be an additional 10 full-time positions.
- Due to multiple unknown factors, such as negotiated rates with PBMs and 340b entities, current rebate amounts, and specific drug prices, additional impacts to commerce and jobs cannot be reasonably determined.

## CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista Lee Carsner

Krista Lee Carsner, Executive Director

/vh